IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12475 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VISHNU ALIAS AJAY ALIAS ANVAR PUJA VAGHRI

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 12475 of 2004

MS HEMA RANA for MR ANIL S DAVE for Petitioner No. 1

MR HM PRACHCHHAK AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 25/01/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the

order passed against him by the District Magistrate, Gandhinagar, City, on 27th of July, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as dangerous person from 27th of July, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two types of materials to arrive at the subjective satisfaction. Firstly, the fact of filing 20 criminal cases against the petitioner during the year 2003 and 2004 under Sections 379 and 380 of the Indian Penal Code for theft committed by the petitioner and secondly four in-camera statements of the witness, whose identity is not disclosed by the detaining authority claiming privilege under Section 9(2) of the PASA Act.

3. The cases filed against the petitioner, 20 in number, indicate the activities of the petitioner about committing thefts and house breaking. While, in-camera statements disclosed that in the town of Gandhinagar, during 2003-2004, there were numerous incidents of house breaking, and on account of that, the citizens of the town felt insecurity. On arrest of the petitioner and his gang, the citizens of the town have felt some relief. Taking into account the fact of filing criminal cases against the petitioner and the fact of in-camera statements, the detaining authority came to the conclusion that the activities of the petitioner of committing house breaking thefts were prejudicial to the maintenance of pubic order, and the petitioner was a dangerous person within the meaning of the PASA Act. The detaining authority came to the conclusion that to prevent the activities of the petitioner of house breaking thefts forthwith, it was absolutely necessary to detain the petitioner under the PASA Act. Therefore, the detaining authority passed the order of detention of the petitioner which is under challenge in this petition.

4. Learned Advocate Ms. Hema Rana for the petitioner and learned AGP Mr. HM Prachchhak for the respondents were heard at length.

5. Out of various grounds urged on behalf of the petitioner and opposed and controverted by learned AGP, it appears that this petition can be examined and disposed of on the sole issue that the detaining authority applied mind properly to the material placed before him.

6. Learned Advocate for the petitioner stated that the petitioner was under judicial custody in some of the cases filed against him and could be released on bail only in September 2004. It was stated that even no bail application was moved when detention order came to be served upon the petitioner in judicial custody.

7. In this respect, in the grounds of detention, the detaining authority came to the conclusion that in some of the offences registered at Gandhinagar Sector-7 and 21 Police Stations and Adalaj Police Station, the petitioner was in judicial custody though the charge sheets were submitted against the petitioner in those cases. The petitioner was likely to be released on bail on his moving bail application before the competent court and the petitioner was likely to continue his illegal activities.

8. The facts of this case are covered by a decision fo the Apex Court in the matter of AMRUTLAL vs. UNION GOVERNMENT, as reported in AIR 2000 SC 3675, wherein the Apex Court observed that there must be cogent materials before the officer passing the detention order that the detenu was likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail is not a cogent material and detention order based on such material is liable to be quashed.

9. Going through the materials placed before the detaining authority, which is also placed on record, nothing is found from which the detaining authority could infer that the petitioner was likely to file bail application and was likely to be released on bail. In other words, there was no material at all to come to the conclusion that the petitioner was likely to be released on bail and was likely to continue his illegal activities. The inference drawn by the detaining authority in this respect in total absence of material, vitiates the order of detention. Thus, the subjective satisfaction arrived at by the detaining authority is not valid, legal and in accordance with law.

10. In the result, the petition is allowed. The order passed by the District Magistrate, Gandhinagar, on 27th of July 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The petitioner - Vishnu alia Ajay

Anvar Puja Vaghri is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair